

**Submitted to the
Rent Control Sub-Committee of the Cambridge City Council**

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c/o John Flynn, Deputy City Clerk
City Hall
Cambridge, MA 02139

March 15th, 1991

To the Sub-Committee,

This note is a response to the recent study prepared for the Rent Control Sub-Committee of the Cambridge City Council.

Many of the comments you will read are harsh. That is not to say they are unjustified. As a property owner in Cambridge, I feel it is wise to withhold my name. I am justifiably concerned about biasing any future dealing's with the Rent Board.

This note is not a call to abandon the truly needy of Cambridge. It is a call to re-examine the current policies of the City. The current system is understandably outdated. There have been many unanticipated changes in the twenty years since the Rent Control Board was created. Realistically, it is not possible to layer new regulation over old to deal with these changes. Real change will only come about by defining the city's goals in terms of supporting the needy. That coupled with solutions that are in tune with the 1990's will help the city overcome many of it's current housing related dilemma's.

Rent Control Reform in Cambridge: A Time for Innovative Change

Although the rent control system in Cambridge was originally drafted to:

- Counter a perceived housing emergency
- Guarantee housing for the needy

What the system has in fact done is:

- Create a housing emergency by guaranteeing poor, even deteriorating housing stock.
- Create unnecessary and unconstitutional set of confiscatory regulations
- Loose sight of its original charter; to guarantee low-income housing for the truly needy

Any solution that would adequately serve the purposes of the truly needy will come about through new, innovative proposals that are in tune with the needs and realities of the 1990's. The Rent Control Board has clearly outlived its usefulness to the point that it now is considered by many to be much more of a Problem than a Solution. That should be quite clear as you read through the Recommendations set forth in the Study titled "A New Agenda for Fairness". Many of the Recommendations are patchwork solutions to fix problems the system has created through its own burdensome, and in part illegal (as demonstrated in the Zucker case) regulatory process.

It is clear to many that the Board has lost sight of its original charter and has evolved into a bureaucracy out of control and out of ideas. There are solutions for the city's truly needy. These solutions will probably be based on a different form of subsidy for the truly needy. The subsidy should have the approval and the participation of all the citizens of Cambridge. Currently that subsidy is shouldered by a minority of property owners.

Contrary to its original intent, to be a temporary emergency measure to address a specific problem, the Board has evolved into a partisan judiciary group that is currently lobbying to expand its control over the city's privately owned property. The Study prepared for the Rent Control Sub-Committee is a proposal that asks the City to extend the Rent Control Board's duties and influence. This Study unintentionally reveals through its numerous Recommendations, that the Rent Control Board is incapable of handling even its current responsibilities.

If viewed from a naive perspective the Study might read like a new agenda for fairness. Unfortunately the Study misses the mark in so many respects that it should only be seen as a well intended exercise by Mr. Ford, an outside observer, and nothing more. Mr. Ford has a good understanding of what the ultimate goal for the City should be; housing for the needy coupled with an agenda that can rescue property owners from twenty years of poorly conceived rent control regulations and policies. Understandably, Mr. Ford's Recommendations look for solutions within the already failed rent control system. Real solutions will be found elsewhere.

The Rent Control Board is an entrenched political entity. That is not to say that rent control is unpopular with many Cambridge citizens including tenants of rent controlled units and homeowners who appreciate the fact that housing prices in Cambridge are artificially high as a result of Rent Control Board policy. Those two groups provide significant political backing for the Board. That backing in no way indicates that the rent control system is a good system. It only proves that it is a system with political staying power.

The Study does have an unintended silver lining. It has helped Cambridge citizens to focus on the issues that concern them and the city and it has given them an opportunity to analyze a Rent Control system that the State Supreme Court has found constitutionally unsound.

As you review the Rent Control system it will be instructive to keep the Court's findings in mind. Those findings resonate with the feelings of many Cambridge citizens: that the Rent Control Board has forgotten its Charter and evolved into a bureaucracy with too much oversight and very little insight.

Many of the Recommendations in the Study are responses to real concerns. Unfortunately much of the Board's policies are fundamentally flawed. Much of its policy is based on a few flawed assumptions that provide the foundation of the Rent Control regulation. One major misconception is that the City can only provide for Cambridge's needy by allowing the Rent Control Board to micro-manage citizens private property. That misconception is reflected in many of the Study's recommendations that address specific issues related to property management. The Zuker case clearly instructs the Board to get out of property management. That instruction implies that the city should instead be exploring truly innovative measures to help the city's needy and keep property management the domain of the property owner.

Although the reader may find this document a harsh indictment of the Rent Control System in Cambridge, it is not a call to abandon the truly needy citizens of the city. This document is simply a call for a "Real Agenda for Fairness". That agenda will call for truly innovative solutions. Those solutions will serve the needs of both property owners and needy citizens of Cambridge. This response will show that most problems related to low-income housing in Cambridge are the result of the Rent Control Board's policies and attitudes, not a result of simply owning property in Cambridge. If simple ownership was the issue, all of Cambridge's rental property, not just rent controlled property, would be susceptible to the "distress" the Study refers to.

The following is a response to some of the Recommendations presented in the Study "A New Agenda for Fairness".

1. ANNUAL GENERAL ADJUSTMENT RATE

What the reader will realize from this first Recommendation is that the Board's attempts to micro-manage private property has lead to an unduly slow compensation approval cycle as well as many of the other problems referred to in the Study. This recommendation quickly points out the Board's inability to efficiently carry out a routine administrative function, the General Rent Adjustment. It will be instructive to keep that failure in mind while considering the various proposals in the Study that would greatly expand the Rent Control Board's administrative and oversight functions. Simple put, if the Rent Control Board were the property management group responsible for an equally large private corporation, the management team would be fired and the groups procedures would be replaced with responsive administrative measures.

The Recommendation begins with "In order to promote predictability of rent increases and decreases, the Rent Control Board should grant general adjustments...". Semantics are important when reading a Study of this nature. Word choices define perspectives in short order. The word "grant" used here, reflects the feeling by the Board that rent adjustments are "favors". The dictionary definition of "grant" is "to accord, as a favor". Rent adjustments should not be favors to be granted by an approving Rent Control Board but to most Cambridge property owners who deal with the Board and its procedures, Rent Adjustments do feel like favors.

Regardless of semantics, it is clear that this particular Recommendation is an "apology" in that it has been proposed to counter the Board's own failure to equitably process rent adjustments. In the Recommendations solution to the problem it incorrectly assumes that tenants and the Board have the right to scrutinize property owner's improvements to their private property. Although this Recommendation would grant "meritorious petitions" for rent adjustments, rent adjustments are in fact compensations due a property owner based on economic factors related to their property. These compensations should not as the Zucker case clearly points out, be based on "review", "tenants testimony" and "petitions pertinent to general rent adjustments". The Zucker case instructs that it is the domain of the property owner to make decisions regarding reasonable improvements to their property.

2. RENT INCREASE CAP

The system is already burdened with disincentives that have helped guarantee a deteriorating housing stock. That deterioration can not be denied and is in fact addressed in other Recommendations. This recommendation quickly becomes a forum for libeling property owners by calling them "gold-plating" landlords and proposes a process that would again increase the Board's role as property micro-managers.

In essence the Board would like to help owners plan their improvements in order to avoid rent increases due to bad "management practices". The board defines bad management practice as incurring an expense that raises rents beyond a certain level due to capital improvements.

Other than the fact that it is general practice by any homeowner to take care of any number of related improvements at one time, Cambridge property owners would much prefer to "group" improvements and thereby limit their dealings with the Rent Board. There is a lot of administrative compounded by an admitted long approval time when applying to the Board for rent adjustments. That negative is compounded by a general understanding that the Board takes a skeptical view of owners efforts to make improvements.

It is clear that the regulatory process, not a conspiracy by "gold-plating" landlords, assure that many owners will bundle capital improvements in order to limit time spent dealing with the Board's processes. More to the point, many of the more expensive capital improvements that will be required in the future are a result of the Board's own policies. Beyond that many capital improvements can not be distributed over five to ten years as the Recommendation advocates. Property owners can not paint one tenth of their property, or replace one fifth of a heating system.

If the Board's policies and regulations could assure quick and easy acceptance of capital improvements, and related rent adjustments, the rental stock will dramatically improve. Once deteriorated housing stock had recovered from twenty years of regulation-induced neglect, rent level changes, on average would, without regulation, rarely exceed the Study's recommended rent caps.

3. AFFORDABLE HOUSING PRESERVATION FUND

This is another of the Recommendations that I would categorize as "apologetic", in the sense that the suggested Fund is needed to correct the Board's flawed policies. The Study notes in this section that 50% of the "low-rent units" surveyed are in "wretched condition". Conversely, a survey of Cambridge's non-rent controlled rental properties would not reveal a similar problem. That clearly indicates that the poor condition of rent controlled housing stock is not a function of owning property in Cambridge or being a property owner. The problem is clearly a function of the one variable in the comparison, Rent Control Board policies.

It is in this section that the Study touches on what should be the Board's main concern, the needy. The Study states that the tenants in the low rent level buildings cannot afford to live in more expensive units. The Recommendation also laments over the condition of the very same properties. This statement highlights the irony of the conflict: providing for Cambridge's needy vs. necessary capital improvements.

This basic conflict may only be resolved by innovative solutions that may include direct monetary subsidies to needy tenants as well as property owners. The solution does not lie in taxing wealthy rent control tenants 2-5%. If supporting the needy is an agenda for the City, the City as a whole should be responsible. There is no other equitable solution. There is no equity or logic to a proposal where tenants are the only Cambridge citizens to pay such a tax. Cambridge's needy residents would still be provided exemption from such a tax.

There are two obvious problems with the Recommendation. First the Board should not be in the loan business. That would simply expand the role of the board unnecessarily to a domain that is best left to traditional lenders. The second is that the Fund is designed to set rent levels artificially low by keeping Fund related improvements out of the rent formula. That of course artificially skews a number of indicators including the value of the property and tax assessments.

Any Fund money would be better used by awarding rent subsidies to the needy and letting rents seek their own levels as a result of needed improvements. That type of use of a Fund has merit, but it does not excuse the original motivation for the the Fund, to rescue distressed property. The system HAS resulted in many distressed buildings.

To assure the "present and future viability of its affordable housing stock" as the Recommendation states, a form of *affirmative action* is needed. A Fund is a viable and deserved solution. This funding activity could be compared to affirmative action's that have been used in employment situations where individuals have been discriminated against in a routine manner. Clearly the Board's policies have created a situation where affirmative action is justified to rescue property owners from the Board's policies.

A Fund should be set up to provide property owners interest-free loans or in truly needy cases, grants. The Fund should partner with community banks. The banks will provide and administer the home improvement loans and the Fund will pay the interest portion of the note. This plan is similar to many programs such as the HEAT program that Cambridge already participates in and has administered so successful.

This type of action, combined with fair rent adjustments, will achieve the goals stated in the Recommendation while avoiding the expansion of the Board's administrative role. This type of Fund should not be administered by the Rent Control Board. An independent group should be put in place to administer any Fund. A sponsoring City organization such as the Building Department would be a logical choice. The group should be modeled after the Division of Energy Resources group that so successfully administered the HEAT loans to Cambridge residents. As an aside, many rent control property owners benefited from these loans.

The Rent Control Board should not be in the position to administer funds. Only a non-political group can fairly administer a fund of this nature.

4. REORGANIZATION OF CODE INSPECTION EFFORTS

It is important that City and State codes are enforced. That should be done, as in all other cities, through an independent Inspectional Services Department. It should not be done through a department linked directly to the Board. The Board is a political entity with a demonstrated bias against property owners.

This recommendation spends a lot of time bashing two groups that it sees as the "foe". The first is the Inspectional Services Department and the second is the city's property owners. Again the Board demonstrates through this Recommendation its desire to manage every aspect of property management including the ability to control Inspectional Services. The folly of this should be clear. If for no better reason there should be a separation of "powers" between two such entities as the Board and Inspectional Service.

While this recommendation spends a lot of effort bashing Inspectional Services and landlords it neglects to point out how Board policies support tenants efforts to delay deserved rent adjustments. Minor code violations are very often used to withhold rent. This is done in an adversarial manner where tenants are clearly more concerned with living rent free than seeing a minor code violation repaired. Tenants often withhold rent payments and then inform property owners of violations knowing that the Board will support their actions. Many thousands of dollars in rent are lost this way.

The Board should not spend its time making a power play for the Inspectional Services department. It should be looking for innovative ways to swiftly and fairly mediate disputes.

5. CITY-WIDE SURVEY

The reader by now may be able to predict the following response. This Recommendation again falls heavily in the area of property management. Beyond that, the building survey information would be of little or no value while wasting money that could be spent productively in other areas.

Although the Recommendation seems to imply the Board will use the information to judge, approve and predict capital improvements, the Board could not, and should not be in the position to compel owners to, or deter owners from, improving their properties. If a fair system were in place, one that encourages owners to improve their properties, properties on average would be in much better shape than they are today. Less and better regulation, not studies and more regulation is the type of solution the city should be looking to.

A survey that would be valuable will identify the number of needy individuals who truly need the safety net provided by low-income housing. This survey could be used to determine the level of low-income housing the City actually needs or wants.

6. COOPERATIVE IMPROVEMENT PROGRAM

A cooperative improvement program is an excellent idea.

First it is important to understand the Supreme Judicial Court's ruling on the Zucker case. It clearly acknowledges the exclusive right of a property owner to make reasonable decisions regarding the improvements to their property. There is nothing in the Zucker ruling that even remotely implies that the tenant or the Rent Control Board has any right to participate in that process. Oddly, the Recommendation asserts that "tenants are often arguably best suited to determine necessary improvements in their apartment".

On a positive note, the Recommendation does point out another problem with the current system. The Recommendation states, "Owners are often discouraged from performing improvements which all involved parties can agree are necessary because of lengthy delays in receiving rent adjustments once work is completed". The Recommendation goes on to state that "Such a situation works to the detriment of owners, tenants, and the viability of the system as a whole".

Unfortunately the solution proposed in the Study suggests a pre-approval process, that would include a negotiation between the tenant, the property owner and the Rent Control Board. As the Zucker case states that scenario can not be regulated as a mandatory process. Again, in clear contradiction of state law, the Recommendation goes as far as saying that an improvement could be initiated by a procedure where "The tenant would approach the Rent Control Board with the proposed improvements to initiate the process". The reader can imagine property owner's frustration with the current system.

The Recommendation is another of those that I would term apologetic, or even entering the realm of self-indictment, in that it recognizes the need for a system that can quickly compensate the property owner for investments in capital improvements while admitting that such a system is not in place today. Clearly, many property owners, especially small property owners, can not afford to carry a bank note while the Board goes through its six to twelve month process of approving rent increases.

A pre-approval process would be an appropriate measure to correct the problems of the current system. The process would more appropriately be called a "pre-notification" process where the Board is notified of planned capital improvements. The Board could immediately begin processing the adjustment. Once the work was completed, the rent adjustment would go into effect. The Board would be instructed to notify the tenants within fourteen days. This process insures the owner they will be quickly compensated for their efforts.

8. TIME LIMIT EVICTIONS

Rightful eviction of tenants is a problem in any city. Mediation is a good solution to typically adversarial situations. Although mediation would be an elegant solution when the situation merits, tenants realistically are more likely to use Board supported tactics to delay rightful eviction.

The example in the Recommendation from Peter Shapiro's "The Potential for Integrating Mediation into the Rent Control System" does a good job of describing how this works. The example also does a good job pointing out how the Board's regulations encourage tenants to use minor code violations to delay rent or avoid paying rent altogether. Although it becomes clear in this example that the tenant does not have the rent money, the Board's cumbersome processes delay the tenants eviction while extending the property owners loss of rental income.

The Board currently encourages mediation in eviction situations. What the Recommendation does not point out is that the mediation process is often used, with the acknowledgment of the Board's Hearing Officers, as a vehicle to literally extort money from property owners who are already injured by the process. Mediations often result in the tenant or their council, suggesting a "fee" that would help the tenant relocate. The extortion is often successful because property owners would rather pay a tenant to move than face a lengthy, expensive, adversarial eviction process.

Although the practice results in all parties agreeing to the "fee" the practice taken as a whole is certainly unethical and most likely illegal. In either case it is an accepted practice condoned by the Board. Any mediation process with credibility would have to assure tenants of their swift eviction with little or no monetary loss to the property owner. Only then could a truly meaningful mediation program be implemented.

11. COMPLIANCE/ENFORCEMENT OFFICER

It would be a mistake to appoint a Rent Control Enforcement officer. It is clear from the Recommendation that the purpose of the officer would be to enforce only selected portions of the Rent Control regulations. This type of position under the guidance of a biased Board, would escalate the already polarized factions in the city.

The Board's bias is clear simply by reading the types of compliance violations the Recommendation believes the officer would be needed for. The Recommendation only refers to owner related property violations when in fact a large percentage of compliance violations may be found by looking closely at tenant activity. Although the Board policy is clear, tenants routinely overcharge sub-tenants and illegal sub-tenants with no fear of compliance violations. It is also common for tenants to illegally charge extensive fees for passing on rent controlled apartments to new tenants.

16. REVOLVING LOAD FUND

Like the Affordable Housing Preservation Fund, this recommendation is a mis-directed proposal to relieve a problem the Board itself has caused. The premise of the Fund is correct. Small property owners do need assistance in securing funds to repair and maintain their buildings. The proposal is in essence an "affirmative action" program to help property owners who have been harmed by Rent Control policies.

As outlined in the response to the Affordable Housing Fund found above, any Fund would best be used to provide zero-interest loans to needy property owners. The loans will be provided and administered by participating local lending institutions in the same way zero-percent HEAT loans are currently administered.

That activity combined with swift and fair rent adjustments will help bring "at risk" buildings back from twenty years of Rent Control induced decay.

17. MINIMUM RENT LEVELS

The Recommendation poses the basic question. The Recommendation sites distressed housing conditions and Building and Health code violations as a problem. The Recommendation goes on to pose the questions "Will minimum rent level alone correct these problems? The Study concludes minimum rent levels will not correct the problem.

As a starting point, minimum rent levels might be re-named "fair rent levels". As mentioned earlier in this note, in non-rent controlled rental housing in Cambridge, fair rent levels have resulted in well maintained rental housing stock. Rather than recognizing the obvious, the Recommendation calls for yet another study to "gather the facts". Those facts the Recommendation states, "may contribute to that necessary enlightenment" required before "ordaining minimum rents to some portion of the housing stock".

What should be obvious is that fair or minimum rent levels will guarantee a healthy housing stock, one of the long term goals of the Study. Unfortunately the Board can not resolve the conflict between well maintained buildings and the cost of paying for that maintenance. The Recommendation does not provide any recommendations, innovative or otherwise, to address that conflict. The Recommendation does imply, without recognizing it, the need for other types of subsidies to assist the truly needy. The Recommendation only points out the irony of a situation that the Board has brought on the city, and it's needy, through it's own regulation.

In Conclusion

Rent control is a political issue in Cambridge. The Rent Control Board has lost sight of its original charter and has presented no new vision for the city's future. The best solution to the problems facing both needy citizens and property owners in Cambridge is to dismantle the City's rent control system completely. With a small number of innovative programs the City can quickly recover from twenty years of rent control and at the same time respond to the needs of the city's truly needy.

Small Property Owners Association

OFFICE OF CITY CLERK
1991 MAY 14 PM 3:12 287 Huron Avenue
Cambridge, MA 02138
CAMBRIDGE MA April 27, 1991

Cambridge City Council
City Hall
Cambridge, MA 02139

Attention: Joseph Connarton, City Clerk

Dear Ladies and Gentlemen:

Enclosed is a copy of a letter dated March 15, 1991 which we would like to submit on behalf of one of our members. This letter pertains to the recent study prepared for the Rent Control Sub-Committee of the City Council. Please note that the author of this letter wishes to withhold his/her name due to a concern regarding potential biasing of future dealings with the Rent Board.

Please include this letter with the records pertaining to this topic.

Very truly yours,



David P. Sullivan
Secretary

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S-707

CONSENT COMMUNICATIONS

Comm. received from David P. Sullivan,
Secretary, SPOA, regarding the recent study
prepared for the Rent Control Sub-Committee.

In City Council,

May 20, 1991

Placed on file.